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Issues and Trends Identified by the Contract Review Board During the Past 6 Months

An Additional Help for ADS Chapter 302

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June 20, 2005

SOLICITATION

- In section G of an RFP, “Cognizant Technical Officer” – sentence should read: “The Cognizant Technical Officer is ‘To be named’ at contracts **award or alternate...**”

- Many RFPs are not including the new branding language. Please include in section D the following:

Marking shall comply with the USAID “Graphic Standards Manual” available at www.usaid.gov/branding, or any successor branding policy.

- Many RFPs are including proposal language preparation language in section C. Proposal Preparation language should be contained in section L.
- There are still some disconnects between Sections L and M of the RFP. Certain information requested in Section L is not addressed as an evaluation factor in Section M. The converse is also true. Some items listed as evaluation factors in Section M are not addressed in the Section L section entitled Information to Offerors.
- Several cost reimbursement solicitations did not note whether it was term form or completion form. If the term form is used in lieu of the completion form, the reasons must be explained since the completion form is preferable to the term form.
- Education requirements for labor categories should allow for some substitution with experience. For example, if a graduate degree and 5 years of experience is required, you should probably allow additional years of experience over and above 5 years as a substitute for an advanced degree. In this way you don’t automatically eliminate extremely qualified individuals simply on the basis of an educational requirement.
- Solicitations should contain the “Option to Extend Services” (52.217-8) and the “Option to Extend the Term of the Contract” (52.217-9) whenever appropriate. This is often left out and then it’s harder to extend the contract beyond the original completion date when the follow-on procurement runs into delays.
- Make sure solicitations include the applicable OCI language from CIB 99-17.

- On IQC's, normally the IQC Project Manager and Deputy Project Manager should be the only key personnel.
- For solicitations, consider allowing more than 30 days for submission of a proposal if you are asking for detailed technical proposals.
- Some solicitations still use the ES-06 as a standard against which salaries are measured which is incorrect. The newly established rate for agencies without a certified SES performance appraisal system (AWCPAS) is the most appropriate replacement for the ES-6 rate. See AAPD 04-11 for additional information on policy and procedures.
- Sequential page numbering is necessary so that the CRB – not to mention potential offerors - can refer to the correct page in their findings.
- Certified Cost and Pricing Data were sometimes requested when adequate competition existed. In this case, cost and pricing data should NOT be requested.
- Some people are still using the old FAR language concerning Determination of the Competitive Range and Contract Award. You should be using the updated FAR language in your solicitations. The FAR citation for Determination of the Competitive Range is FAR 15.306(c) (1).
- For CPFF contracts, you do not need a detailed cost breakout in Section B with numerous CLINs. You only need to include the total estimated cost, the fixed fee, and the total estimated cost plus fixed fee. When you have a detailed cost breakout with numerous CLINs, it gives the impression that the contractor doesn't have the authority to move amounts from one CLIN to another, a flexibility that the contractor needs in a CPFF environment.
- CPFF completion type contracts should not be mentioning best efforts by the contractor. Best efforts are appropriate for term (LOE) type contracts but not completion type contracts.
- Section H of the solicitation under "Insurance and Services" – please change contact information to the following:
 - (a) Pursuant to AIDAR 752.228-3, Workers Compensation Insurance (Defense Base Act, DBA), USAID's DBA insurance agent is:

Rutherford International, Inc.
5500 Cherokee Avenue, Suite 300
Alexandria, VA 22312

Points of Contact:
Diane Proctor or Sue Somers
(703) 813-6503

Hours of Operation are:
8 a.m. to 5 p.m. (EST)
Telefax: (703)354-0370
E-Mail: www.rutherford.com

(b) Contractor's are responsible for providing medical evacuation coverage for their employees. The following State Department website, <http://www.state.gov/m/dghr/flo/24051.htm>, provides possible sources from which MEDAVAC coverage may be obtained. USAID does not endorse any of the listed sources. Medical evacuation costs are allowable as a direct cost.

Note: Rutherford is spelled with two "o's."

TECHNICAL EVALUATION

- When discussing the strengths of a proposal, take out comments that state that the proposal met solicitation requirements. These are not strengths. Also, strength should not be a weakness as well. An example of this is as follows:

Strengths

Gender approach is acceptable. The proposal demonstrates sensitivity of approach in incorporating the differential participation of men and women. The offeror has proposed gender analysis of data and consideration of unintended gender side effects of Program implementation.

Weaknesses

The proposal does not demonstrate in detail the gender impact and differential participation of men and women in the project activities.

- The TEC should arrange their Technical Evaluation Report in a way that aligns with the factors as set forth in Section M so that it's clear that all evaluation factors have been addressed.
- If an offeror's technical score is revised upward or downward, the Technical Evaluation documentation needs to explain the reasons for the change.
- Some technical reviews downgraded offeror's proposals for factors that were not stated in Section L or M.

- The TEC memo must include the strengths, weaknesses, and deficiencies of each organization being evaluated.
- The narrative for the strengths and weaknesses should be consistent with the scoring of the tech proposal. Sometimes mediocre narrative accompanied a high technical score and vice versa.
- The TEC instructions/evaluation plan should ensure that the members are following the criteria as laid out in the Solicitation. When using adjectival ratings, make sure that the definitions are clear and workable.
- Some of the technical scoring sheets contained arithmetic errors.
- Past Performance, Corporate Capability and prior experience are different. With respect to past performance, the NIH performance system should be reviewed and that review should be documented as part of the technical evaluation; this is only one source of information. Other sources should be checked out as well. It is important to note that Past performance must be a separate evaluation criteria. Corporate Capability talks about the work a contractor has done in the past; the breadth and depth of their experience particularly as it relates to the work at hand. Past performance speaks to how well they performed on previous contracts; what their track record has been.

NEGOTIATION MEMORANDUM

- Contractors with a current NICRA should not be proposing a different NICRA, however, when contractors propose indirect rates that vary from their current NICRA, the reason for the difference must be explained and justified.
- There are still some negotiation memoranda that have not adequately justified the Best Value tradeoff. Some of the memoranda simply say that one offeror provides the greater value without saying why. Others simply refer to the formula as justification without documenting why they are the best value. It's very important to note the qualitative as well as quantitative differences between proposals.
- Some Negotiation Memos for cost reimbursement procurements do not address cost realism adequately or at all. FAR 15.305(a)(1) states that "When contracting on a cost-reimbursement basis, evaluations shall include a cost realism analysis to determine what the Government should realistically expect to pay for the effort, the offeror's understanding of the work, and the offeror's ability to perform the contract".
- The Negotiation Memorandum needs to either address the Discussion questions posed to each offeror or include them as attachments to the Negotiation Memorandum for the Board member's information.

- If certain numbers are required as “plug” figures in an offeror’s proposal and an offeror deviates from this plug figure, the reason for it should be scrutinized very closely and the other offerors should be given the same opportunity.
- The determination of whether to include or exclude an offeror from the competitive range needs to involve the consideration of all evaluation factors including cost and past performance.
- Offerors have to be given an opportunity to respond to negative Past Performance information if their inclusion or exclusion from the competitive range is uncertain and this information is the determining factor preventing them from being placed in the competitive range.
- Any significant differences between the Government estimate and the cost proposals in the competitive range need to be addressed.
- Any required approvals or deviations should be addressed in the beginning or end of the Negotiation Memorandum.
- If any exceptions were taken to earlier solicitation reviews or competitive range reviews by the CRB, those exceptions should be noted in the Negotiation Memoranda.
- The Negotiation Memoranda should start with a brief discussion of the purpose of the procurement. Include a chronology of major solicitation events in the Neg Memo including when proposals were received, when discussions were held, when the competitive range determination was made, when discussions were closed, etc.
- The Negotiation Memorandum should provide a table that contains the technical rating and the proposed cost for each offeror for ease of reading.
- Per CIB 84-14, the fee/profit evaluation factor matrix (also known as the Weighted Guidelines) should be used for evaluating proposed fee for a CPFF contract.
- All cost elements, including ODC’s, must be determined to be fair and reasonable.